



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

April 13, 1998

Mr. James M. Kuboviak
County Attorney
Brazos County
300 E. 26th Street, Suite 325
Bryan, Texas 77803

OR98-0937

Dear Mr. Kuboviak:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 114469.

The Brazos County Attorney's Office (the "county attorney") received a request for information relating to the analysis of a blood sample that was taken from the requestor's client. You state that some of the requested information is not in the county attorney's possession. You claim that the remaining information is excepted from disclosure under section 552.103 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

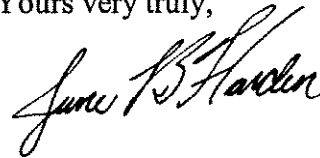
Section 552.103(a) of the Government Code excepts from disclosure information relating to litigation to which a governmental body is or may be a party. The governmental body has the burden of providing relevant facts and documents to show that section 552.103(a) is applicable in a particular situation. In order to meet this burden, the governmental body must show that (1) litigation is pending or reasonably anticipated, and (2) the information at issue is related to that litigation. *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); *Open Records Decision No. 551* (1990) at 4. You have demonstrated that litigation is pending against the requestor's client. *State v. Stouter*, Nos. 112-97, 113-97 (County Court at Law No. 2, Brazos County, Texas). Having reviewed the requested information, we agree that it relates to the pending litigation. Thus, we conclude that the county attorney may withhold the requested information from disclosure pursuant to section 552.103(a).

We note, however, that if the opposing party in the pending litigation has seen or had access to any of the information in these documents, there would be no justification for withholding that information from disclosure pursuant to section 552.103(a). Open Records

Decision Nos. 349 (1982), 320 (1982). In addition, the applicability of section 552.103(a) ends once the litigation has concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied on as a previous determination regarding any other records. If you have any questions regarding this ruling, please contact our office.

Yours very truly,

A handwritten signature in cursive script, appearing to read "June B. Harden".

June B. Harden
Assistant Attorney General
Open Records Division

JBH/glg

Ref.: ID# 114469

Enclosures: Submitted documents

cc: Mr. Scot R. Courtney
Scardino & Courtney
2740 Texas Commerce Tower
Houston, Texas 77002
(w/o enclosures)